



Governor Brian Schweitzer  
Commissioner Keith Kelly

# Montana Department of LABOR & INDUSTRY

## Office of Legal Services

ECONOMIC AFFAIRS IC  
SEPTEMBER 11, 2012  
EXHIBIT 3

To: Economic Affairs Interim Committee  
From: George Parisot, CIO on behalf of Labor Commissioner, Keith Kelly  
Date: Sept. 11, 2012  
Re: Dept. of Labor and Industry 2013 Legislation

### A. Unemployment Insurance Division (UID):

1. UI Integrity legislation required by federal Public Law 112-40. This bill is intended to improve the integrity of the unemployment insurance system by creating incentives for employers to timely provide information regarding claims and by increasing the penalties for claimants making false statements to obtain or increase benefits.

Employers who fail, without good cause, to submit information or documentation during the initial claim or redetermination process would not receive a credit for benefits charged to their account if a benefit overpayment was established during a subsequent appeal. This would reduce or prevent benefits overpayments occurring now. This legislation is intended to encourage employers to provide the information at the initial or redetermination levels of the claims process. The Department's scan revealed 52 employers, primarily represented by third party administrator companies, who failed to provide timely or adequate information. The resulting benefit overpayments totaled \$195,052.00.

The bill also allows federal income tax refunds to be offset by benefit overpayments and increases other penalties regarding fraudulent overpayments.

Fiscal Impact: Based on a review of all overpayments established in the past biennium, there would be minimal impact to the UI Trust Fund.

2. Revise Unemployment Insurance laws to clarify that licensed naturopaths are recognized health care providers for the purposes of unemployment insurance, and providing for the posting of financial assurances by certain nonprofit organizations to secure the payment of unemployment insurance obligations. No fiscal impact.

3. Revise the § 39-51-2101 definition of total unemployment by deleting the words "two times" and replacing with "150% of". This bill removes possible disincentives to return to work fulltime, by reducing the eligibility for UI when working part time. A person would not be able to make more by drawing UI benefits and working part-time, than they would be able to by working full-time. Fiscal Impact: Positive fiscal impact to Trust Fund of up to \$5 million in the biennium.

### B. Employment Relations Divisions (ERD)

1. Provide for an exception to the mandatory construction industry workers' compensation coverage where there is an extraterritorial agreement between MT and a neighboring state. Clarify extraterritorial provisions. No fiscal impact.

2. Revise the Uninsured Employers' Fund to clarify that the UEF is not an insurer and is not subject to the same provisions as insurers. Recently there have been cases asserting the UEF is to be treated like an insurer. The bill makes clear the UEF is a safety net rather than an insurer and clarifies what Workers' Compensation Act provisions do and don't apply to the UEF. No fiscal impact, but necessary to stabilize this fund.
3. Require contractors and subcontractors providing construction services on state public works contracts to document a commitment to occupational safety on those contracts. Provides for final payment on a contract to be held pending receipt of required documentation. No fiscal impact.
4. Provide for a cease and desist order for unregistered construction contractors and strengthening the interest and lien penalty provisions for construction contractors and independent contractors. Minimal fiscal impact.
5. Clarify Wage Payment Act regarding the period in which an employee may recover wages. The amendment changes the statute of limitations for 39-3-207 so it operates the same way as time limitations in other areas of law. No fiscal impact.
6. Provide for mine safety training, safety and health consultation services, and recovery of costs for instructional and testing materials. Revise the minimum frequency of required mine inspections. Result of legislative audit, no fiscal impact.

#### **C. Business Standard Division (BSD):**

1. Provide for enforcement of unlicensed practice for the Board of Plumbing, the Electrical Board, and Realty Regulation. Grant these three boards the regulatory authority to issue cease and desist orders to persons practicing without the appropriate license; provide for judicial review and enforcement of the orders, and provide for the award of costs, attorney fees, and penalties. Minimal fiscal impact (costs mostly recovered from unlicensed practitioners).
2. Generally revise Board of Funeral Service statutes. This bill is tentative and may or may not be introduced. The bill provides for consistent terminology, eliminates redundancies, and clarifies:
  - ~ scopes of practice of morticians and crematory operators;
  - ~ who may transport a dead body;
  - ~ types of services that may be provided in a branch mortuary establishment (no preparation);
  - ~ legal forms of disposition of a dead body and disallow chemical disintegration of a dead body;
  - ~ scope of practice of crematory operator includes performing cremations;
  - ~ educational requirements for mortician/funeral director licensure.

These changes are designed to address statutes labeled as "confusing" and "not keeping up to date with technology" at previous EAIC meeting. No fiscal impact.

#### **3. Consensus Combined Board Bill:**

This proposal contains all board legislation that the Department, the Board, and the interested persons (associations, etc.) all agree is necessary. This bill contains primarily housekeeping matters such as clarifying board member requirements, board terms, and composition and updating terminology to current industry usage. A few substantive changes that aren't anticipated to be controversial or

complicated are also included. The following are several examples of the types of issues that this combined bill addresses:

- Board of Medical Examiners: Generally amend Title 37, chapter 3, MCA, to eliminate outdated, vague, and redundant provisions, and clarify that the Board neither licenses through reciprocity nor gives examinations. No fiscal impact.

Amend 37-2-302, MCA, to make it a misdemeanor for health care professionals who fail to report gunshots or stab wounds. Federal policy prevents VA hospitals from reporting absent a penalty provision in law, and a similar penalty already exists for non-reporting of communicable diseases. This will protect the lives and well-being of individuals who might choose to seek treatment at a VA hospital to avoid Montana law enforcement. No fiscal impact.

Amend 37-6-108, MCA, to add hyperbaric oxygen therapy (medically sound treatment for wounds that fail to heal due to diabetes/poor circulation) to podiatrist scope of practice. Negligible fiscal impact.

- Board of Pharmacy: Amend Title 37, chapter 7, MCA, to add pharmacy benefit management to the practice of pharmacy and regulate this activity. Minimal fiscal impact to license 10-20; approx. \$5,000 annually.

Amend Title 50, chapters 31 and 32, MCA, to allow use and submission of electronic prescriptions. No fiscal impact.

- Board of Nursing: Amend 37-8-202, MCA, to expand applicability of medical assistance program to all licensees of the Board, instead of just licensed nurses. No fiscal impact.

- Board of Chiropractors & Board of Veterinary Medicine: Amend 37-12-104 and Title 37, chapter 18, MCA, to establish certification of licensed chiropractors and veterinarians to practice animal chiropractic. Minimal fiscal impact for VET bd to issue/renew certificates to approx. 10 licensees a year.

- Board of Social Work Examiners and Professional Counselors: Amend Title 37, chapters 22, 23, and 37, MCA, to provide for the registration and renewal of social work, professional counselor, and marriage & family therapy licensure candidates while they obtain post-degree work experience. Minimal fiscal impact.

Amend 37-37-201, MCA, to require background checks for licensed marriage & family therapists. This requirement is already in place for professional counselors and social workers. No fiscal impact.

- Board of Outfitters: Amend 37-47-304, MCA, to remove the requirement for outfitter endorsement of guide and professional guide applications. No fiscal impact.

Repeal 37-47-316, MCA, to eliminate the Board audit of transferred net client hunter use. No fiscal impact (Bd savings in no longer tracking NCHU transfers).

- Board of Private Alternative Adolescent Residential or Outdoor Programs: Repeal 37-48-107, MCA, as the Board no longer grants provisional licenses (this was necessary when the board was first established). No fiscal impact.

- Board of Public Accountants: Amend Title 37, chapter 50, MCA, to align with 46 of the 50 United States by licensing only Certified Public Accountants (no more certificate holders or licensed public accountants). Generally amend and repeal statutes to update and clarify terminology used in the industry and align with Uniform CPA Act. Negligible fiscal impact.

- Board of Realty Regulation: Amend Title 37, chapter 51, MCA, to clarify scope of practice of and exemptions from licensure as property managers. No fiscal impact.

- Board of Professional Engineers & Professional Land Surveyors : Amend 37-67-309 and -310, MCA, to double the office/field experience required for licensure as professional land surveyors and land surveyor interns, effective in 2019. No fiscal impact.

- State Electrical Board: Amend 37-68-316, MCA, to waive the fine for the first citation for failure to display electrician's license. No fiscal impact.

- Board of Plumbers: Amend 37-69-304, MCA, to eliminate the practical examination requirement for journeyman plumber's licensure. The exam is a burden on applicants, has been historically difficult to organize and administer, and is not necessary to measure applicant competency. Minimal fiscal impact (slight board savings possible).

Amend 37-69-310, MCA, to waive the fine for the first citation for failure to display a plumber's license. No fiscal impact.

- Building Codes: Amend 50-76-110, MCA, to change the experience requirement for the Department crane inspector. The Department has been unable to successfully fill this statutorily-mandated position due to competition for crane operators of the same experience and credentials. A 1st class operator can demand 3 to 4 times the salary in the construction environment than what the Dept. can pay, and the Dept. can hire an inspector in the winter months (construction shutdown), only to lose the employee as soon as construction begins in the spring. Since license checks are the mainstay of this position, the Dept. concluded that a class 3 oiler can adequately perform the checks along with the setup and operational compliance checks in this position. No fiscal impact.

#### **D. Workforce Services Division (WSD):**

1. The Federal Office of Apprenticeship has requested that the word "trade" be replaced with the word "occupation" in Title 39, Chapter 6, part 1, where appropriate, so that Montana's apprenticeship program will continue to be recognized for federal purposes. No fiscal impact.